

**Dated**

**2016**

**Greater London Authority**

and

**London Borough of Lewisham**

**Memorandum of Understanding**

New Bermondsey Housing Zone

**DRAFT**

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# Memorandum of Understanding (MoU)

dated 2016

## Parties

- (1) **Greater London Authority** of City Hall, The Queen's Walk, More, London SE1 2AA (the **GLA**);
- (2) **London Borough of Lewisham** of Laurence House, Catford Road, London SE6 4RU (the **Borough**);

## 1 Introduction

- 1.1 The **Borough**, in partnership with the developer, Renewal Group Limited, (**Renewal**), submitted proposals to the GLA for funding and designation as part of the Housing Zones Programme in respect of the proposed construction and/or delivery of a number of outputs (the **Zone Outputs**) within the Zone.
- 1.2 The proposed Zone is the area shown edged red on the plan in Schedule 1. The proposed Zone Outputs are detailed in Schedule 2.
- 1.3 The GLA has agreed in principle to make funding available in respect of the Zone, subject to further due diligence, availability of GLA resources and subject to contract, to enable the delivery of the Zone Outputs.
- 1.4 This Memorandum of Understanding sets out the overarching principles upon which Zone Funding may be made available to the Borough and or Renewal (as appropriate), and the Borough's role in supporting delivery of the Zone Outputs. Legally binding intervention agreements between the GLA, the Borough and or Renewal (as appropriate) will set out the detailed terms and conditions upon which specific amounts of Zone Funding will be advanced by the GLA.

## 2 Principles of the provision of Zone Funding

- 2.1 The GLA has agreed in principle during the period until March 2018 to make available funding to facilitate the delivery of the Zone Outputs in an aggregate principal amount equal to £20,000,000 (**Zone Funding**). The Borough and Renewal acknowledge that this allocation is an indicative amount only and may be adjusted by the GLA.
- 2.2 The parties acknowledge and agree that the provision of any Zone Funding by the GLA is subject to:
  - 2.2.1 due diligence (including financial and legal due diligence) having been carried out by the GLA and the results of which being satisfactory to it;
  - 2.2.2 the availability of GLA resources; and
  - 2.2.3 a legally binding contract having been concluded between the GLA, the Borough and or Renewal (as appropriate) setting out the detailed terms and conditions pursuant to which the Borough or Renewal agrees to deliver or procure the delivery of the capital works or other outputs (as specified in the relevant

agreement) which secure the delivery of the Zone Outputs (the **Intervention Agreements**).

2.3 The parties acknowledge that:

2.3.1 the GLA will enter into a Borough Intervention Agreement with the Borough for up to £12,000,000 out of the Zone Funding; and

2.3.2 subject to clause 2.2 above, there will be further Intervention Agreements with the Borough and or Renewal (as appropriate) for every other intervention in the proposed Zone Outputs detailed in Schedule 2.

### 3 **State Aid**

3.1 The Borough acknowledges that Zone Funding will be given under each Intervention Agreement on the basis that such Zone Funding is compliant with State Aid requirements. The grounds for such compliance will vary depending on the particular circumstances of the Zone Outputs under each proposed Intervention Agreement but State Aid compliance is likely to be based on one or more of the following grounds:

3.1.1 the funding is compatible aid given in accordance with an EU measure (including a Service of General Economic Interest or in accordance with the General Block Exemption Regulation);

3.1.2 the funding does not constitute State Aid;

3.1.3 the funding is provided for a public function which is not an economic activity; and

3.1.4 such other grounds as may be applicable.

### 4 **Zone Outputs**

4.1 The Borough acknowledges that the GLA has (subject to clause 2 above) allocated the Zone Funding on the understanding that the Zone Outputs will be delivered in accordance with the details in Schedule 2.

4.2 The Borough must take reasonable steps to support the delivery of the Zone Outputs in accordance with the terms and timescales set out in Schedule 2.

4.3 If and to the extent that any variation is agreed in relation to an Intervention Agreement which has the effect or ought to have the effect of varying the Zone Outputs in Schedule 2 or the Zone Funding allocation (as set out in clause 2.1 above and detailed in Schedule 2), the parties must amend this MoU, such amendment to be recorded in writing, to reflect the variation of the Intervention Agreement's terms.

### 5 **Borough Role and Responsibilities**

5.1 The Borough will:

5.1.1 ensure that:

(a) in relation to the Zone a Planning Performance Agreement is in place in relation to each of the sites on which the Zone Outputs are to be

constructed (the **Sites**) and, as and when requested by GLA, that GLA is a party to reach agreement in relation to any Site which is referable to it; or

- (b) an alternative arrangement (acceptable to GLA acting reasonably) is in place to ensure efficient and prompt decision-making in relation to planning matters; and
- (c) no change is made to the arrangements contemplated in this clause without the GLA's prior written consent;

- 5.1.2 ensure the delivery of a number of related objectives and outcomes, which will help deliver the Zone Outputs, previously referred to as the "something-for-something" offer in their Housing Zone proposals, (the **Borough Contribution**) in the form, quantum and timescales referred to in Schedule 3;
- 5.1.3 comply with the provisions of the Governance Arrangements detailed in Schedule 4 and not make any changes to the same without the prior written consent of the GLA; and
- 5.1.4 take all reasonable steps to meet the Key Performance Indicators (KPIs) listed in Schedule 5.

## 6 **Notifications, reporting and audit**

6.1 The Borough shall notify the GLA:

- 6.1.1 immediately upon any change (whether actual or proposed) required to the Zone Outputs;
- 6.1.2 immediately upon becoming aware of any event which:
  - (a) prejudices or might prejudice the delivery of the Zone Outputs or any; or
  - (b) prejudices or might prejudice the Borough's ability to provide the Borough Contribution; or
  - (c) has resulted in or might give rise to the making of a report under Section 114(3) or Section 114A of the Local Government Finance Act 1988 or Section 5 of the Local Government and Housing Act 1989 or a direction by the Secretary of State under Section 15 of the Local Government Act 1999.
- 6.1.3 as soon as reasonably practicable on becoming aware of any claim brought against the Borough arising out of or relating to the activities of the Borough and/or the Zone Funding or pursuant to any documents entered into (or to be entered into) by the Borough in relation to a Zone; or
- 6.1.4 immediately upon failing to comply with clauses 5.1.2, 5.1.3 or 5.1.4.

6.2 The GLA and the Borough shall attend a review meeting within ten (10) business days of each quarter date (31 March, 30 June, 30 September and 31 December) (or within such longer period as the GLA may at its absolute discretion agree) to discuss (but without

limitation) progress in achieving the Zone Outputs and such other matters relevant to the Housing Zones Programme as are notified by any party to the others in writing at least five (5) business days prior to the date of the review meeting. Renewal will be expected to attend this meeting and will be given reasonable notice to attend.

6.3 The GLA or the Borough may also call a review meeting at any time outside of the quarterly cycle provided that the party requesting the meeting gives reasonable prior written notice to the others of such meeting.

6.4 The GLA may also request (whether on behalf of itself or any Government office) at any other time information from the Borough in respect of the delivery of the Zone Outputs or such other matters relating to the Housing Zones Programme and the Borough shall promptly respond to any such request.

6.5 The Borough shall, as and when requested by GLA, make available on a transparent and full disclosure basis, in good faith and in a timely manner to GLA where required in connection with this MoU or the Zone Outputs a copy of each of: all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Borough (including by its officers, employees, agents or consultants) for the purposes of the Housing Zone Programme.

## **7 Change in financial circumstances**

The Borough shall notify GLA immediately where there is or has been any reduction or withdrawal in relation to the Borough Contribution.

## **8 Public relations and publicity**

8.1 The Borough will ensure that the GLA's requirements from time to time in relation to public relations and publicity for capital projects (including site signage) as notified to the relevant Borough from time to time are observed and implemented in respect of the Zone and/or the Zone Outputs.

8.2 The Borough will not, and will procure that, no officer, employee or agent will not communicate with any representative of any press, television, radio or other communications media on any matter concerning the Zone and/or the Zone Outputs without GLA's prior written consent.

8.3 The GLA will have the right to approve any announcement by the Borough in relation to the Zone and/or the Zone Outputs before it is made.

8.4 The Borough shall grant GLA a non-exclusive, royalty free licence (to the extent that it can grant such a licence) to use any photographs, records, images, articles or illustrations in relation to the Zone undertaken by or for the Borough for use in any publicity or advertising, whether published alone or in conjunction with any other person.

## **9 Reputation of the parties**

9.1 The Borough will not, and will use all reasonable endeavours to procure that all officers, employees or agents will not knowingly do or omit to do anything in relation to the Zone, Zone Outputs or in the course of their other activities that may bring the standing of the

Mayor, the GLA or any functional bodies or subsidiaries of the GLA into disrepute or attract adverse publicity for GLA.

9.2 No party will publish any statement, orally or in writing, relating to another party which might damage that other party's reputation or that of any of its officers or employees.

## 10 **Confidentiality and freedom of information**

### 10.1 **Confidentiality**

10.1.1 Subject to clauses 10.1.2 to 10.1.5 below, no party shall disclose to any third party any Confidential Information without the prior written consent of the other relevant party.

10.1.2 Clause 10.1.1 shall not apply to any Confidential Information which:

- (a) is or becomes public knowledge (otherwise than by breach of clause 10);
- (b) is lawfully in the possession of the disclosing party, without restriction as to its disclosure, before they receive it from another party;
- (c) is received by the disclosing party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) a party discloses in response to a Request for Information.

10.1.3 Clause 10.1.1 shall not prevent any party from disclosing, without the other relevant party's consent, any Confidential Information to the extent that it is required to be disclosed:

- (a) by law, including the FOIA Legislation, or by a court, arbitral or administrative tribunal or regulatory body in the course of proceedings before it or a regulatory body acting in the course of its duties;
- (b) to enable the disclosing party to perform its obligations under any Development Facility Agreement; or
- (c) in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.

10.1.4 Nothing in this clause 10 shall prevent the GLA:

- (a) disclosing any Confidential Information for the purpose of the examination and certification of GLA's accounts or any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which GLA has used its resources; or
- (b) disclosing any Confidential Information obtained from the Borough to any other department, office or agency of the Crown or to any person engaged in providing any services to GLA for any purpose relating to or ancillary to this MoU or the Housing Zones Programme or any person conducting an Office of Government Commerce gateway review;

provided that in disclosing information under clause 10.1.4(b) the GLA discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 10.1.5 Nothing in this clause 10.1 shall prevent the GLA from publishing information relating to Zone Funding allocations, locational characteristics of a Housing Zone and/or Zone Outputs.

## 10.2 Freedom of information

- 10.2.1 Each party to this MoU acknowledges that the GLA and the Borough are FOIA Authorities and:

- (a) are subject to legal duties which may require the release of information; and
- (b) FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.

- 10.2.2 The FOIA Authority in receipt of or to receive the RFI (**Relevant FOIA Authority**) will be responsible for determining in its absolute discretion whether:

- (a) any Information is Exempted Information or remains Exempted Information; and/or
- (b) any Information is to be disclosed in response to a Request for Information;

and in no event shall any party, other than the Relevant FOIA Authority, respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.

- 10.2.3 Subject to clause 10.2.4 below, each party acknowledges that the Relevant FOIA Authority may disclose Information:

- (a) without consulting them (or any one of them); or
- (b) following consultation with them (or any one of them) and having taken (or not taken, as the case may be) its (or their) views into account.

- 10.2.4 Without in any way limiting clauses 10.2.2 and 10.2.3, in the event that the Relevant FOIA Authority receives a RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other parties.

- 10.2.5 Each party will assist and co-operate as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and will procure that its agents and sub-contractors will), at their own cost:



- (a) transfer any RFI received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a RFI;
  - (b) provide all such assistance as may be required from time to time by the Relevant FOIA Authority and supply such data or information as may be requested by the Relevant FOIA Authority;
  - (c) provide the Relevant FOIA Authority with any data or information in its possession or power in the form that the Relevant FOIA Authority requires within five (5) Business Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information; and
  - (d) permit the Relevant FOIA Authority to inspect any records as requested from time to time.
- 10.2.6 Nothing in this MoU will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.
- 10.2.7 Each party acknowledges and agrees that GLA may in its absolute discretion redact all or part of the Information prior to its publication. In so doing and in its absolute discretion GLA may take account of any EIR Exemptions and FOIA Exemptions. GLA may in its absolute discretion consult with the relevant party (or parties) regarding any redactions to the Information to be published pursuant to this clause 10. GLA will make the final decision regarding publication and/or redaction of the Information.
- 10.3 The obligations in this clause 10 will survive the expiry or termination of this MoU and any Development Facility Agreements for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this clause 10 or of any other duty of confidentiality relating to that information.
- 10.4 In this clause 10, the following words and expressions have the following meanings:
- 10.4.1 **Business Day** means any day other than a Saturday, Sunday or statutory bank holiday in England;
  - 10.4.2 **Confidential Information** means in respect of GLA all information relating to GLA or the existence or terms of this MoU or any agreement associated with this MoU (**Associated Agreement**) in respect of which any party hereto becomes aware in its capacity as a party to this MoU or which is received by such party in relation to this MoU or an Associated Agreement from either GLA or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from GLA or any of its advisers in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Borough means such

specific information as the Borough shall have identified to GLA prior to the date hereof as confidential information for the purposes of this MoU;

- 10.4.3 **EIR** means the Environmental Information Regulations 2004, and any subordinate legislation made under this statutory instrument from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
- 10.4.4 **EIR Exemption** means any applicable exemption to EIR;
- 10.4.5 **Exempted Information** means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions;
- 10.4.6 **FOIA** means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
- 10.4.7 **FOIA Authority/Authorities** means a public authority as defined by FOIA and/or EIR;
- 10.4.8 **FOIA Exemption** means any applicable exemption to the FOIA;
- 10.4.9 **Information** means:
- (a) in relation to the FOIA has the meaning given under section 84 of the FOIA and which is held by GLA or the Borough at the time of receipt of an RFI; and
  - (b) in relation to the EIR has the meaning given under the definition of “environmental information” in section 2 of the EIR and which is held by GLA the Borough at the time of receipt of an RFI;
- 10.4.10 **Information Commissioner** has the meaning set out in section 6 of the Data Protection Act 1998 as amended or updated from time to time;
- 10.4.11 **Request for Information/RFI** shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Zone, this MoU, any Development Facility Agreement or any activities or business of GLA;

## 11 **Data Protection Act**

The parties will co-operate with one another in order to enable each party to fulfil its statutory obligations under the Data Protection Act 1998 as amended or updated from time to time.

## 12 **No fettering of discretion/statutory powers**

Nothing contained in or carried out pursuant to this MoU or any Development Facility Agreement and no consents given by GLA or the Borough will unlawfully prejudice GLA's or the Borough's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments, orders or regulations.

13 **Dispute Resolution**

Any dispute as to the interpretation or application of this MoU shall be directed to senior representatives of the parties who will meet within ten (10) business days (or such longer period not exceeding twenty (20) business days as the parties may agree) of receipt of a notice from the party who considers that a dispute exists and use their reasonable endeavours to resolve such dispute amiably and in good faith.

14 **Disclaimer**

GLA will not be liable to the other party for any advice given by a representative of GLA. In addition, GLA gives no assurance as to the suitability or viability of any Housing Zone and no endorsement of the same.

15 **Status**

15.1 Except as expressly specified in clause 15.2 below, this MoU is not intended to be legally binding and no legal obligations or legal rights shall arise between the parties as a result of this MoU. The parties sign the MoU intending to honour all their obligations.

15.2 Clauses 8.4 (public relations and publicity), 10 (confidentiality and freedom of information), 15.2 and 15.3 (status) and 16 (governing law) are legally binding and the obligations of each party under these clauses are made in consideration of the obligations of each other party under these clauses.

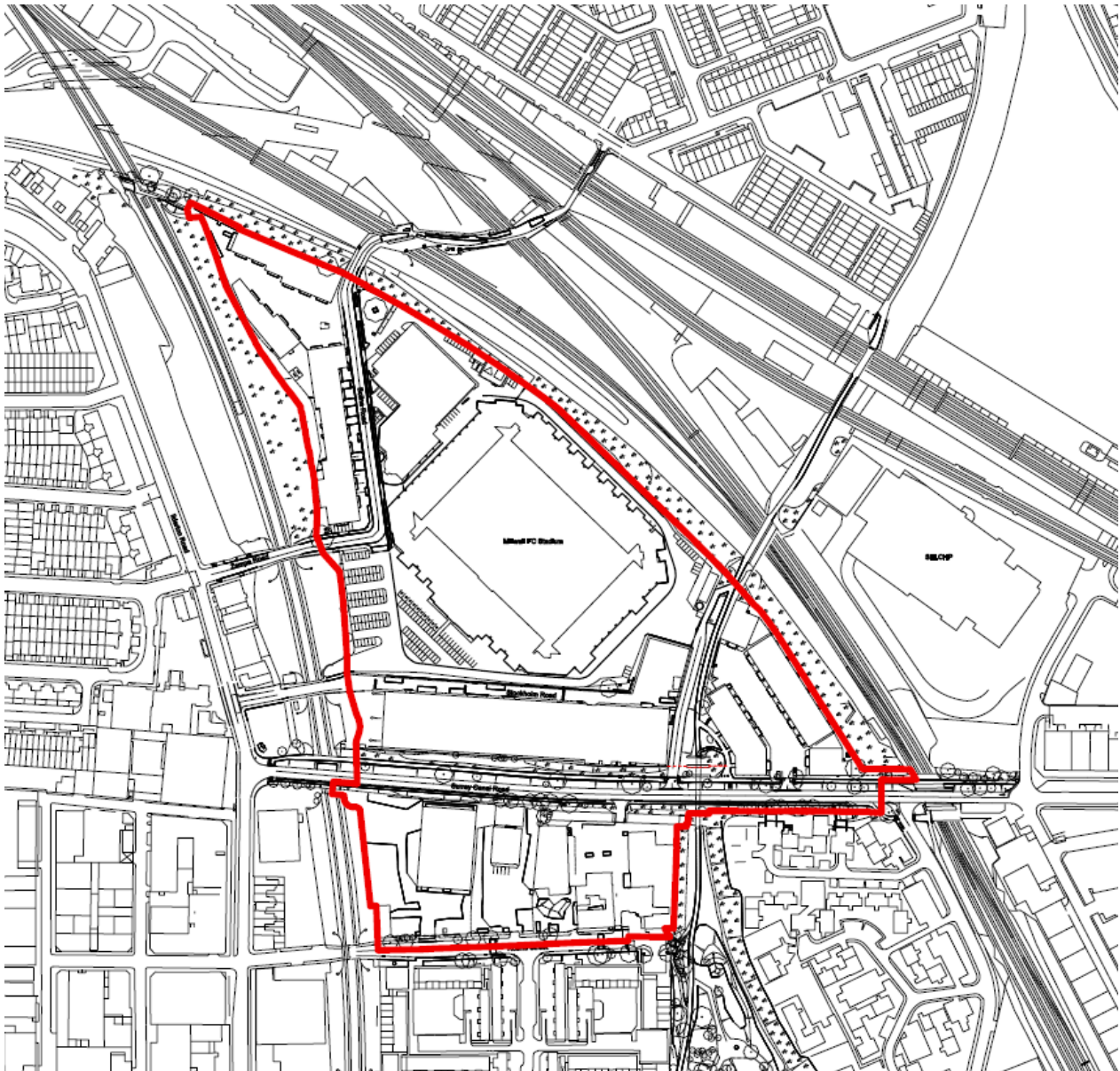
15.3 Except as otherwise expressly provided no person who is not a party shall be entitled to enforce any of the legally binding terms of this MoU solely by virtue of the contracts (Rights of Third Parties) Act 1999.

15.4 Nothing in this MoU is intended to, or shall be deemed to establish any partnership or joint venture between the parties, constitute any party as the agent of any other party, or authorise any of the parties to make or enter into any commitments for or on behalf of the other party.

16 **Governing law**

This MoU shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1 –Zone Plan



**Schedule 2 – Zone Outputs**



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Bermondsey\_HZ\_mou

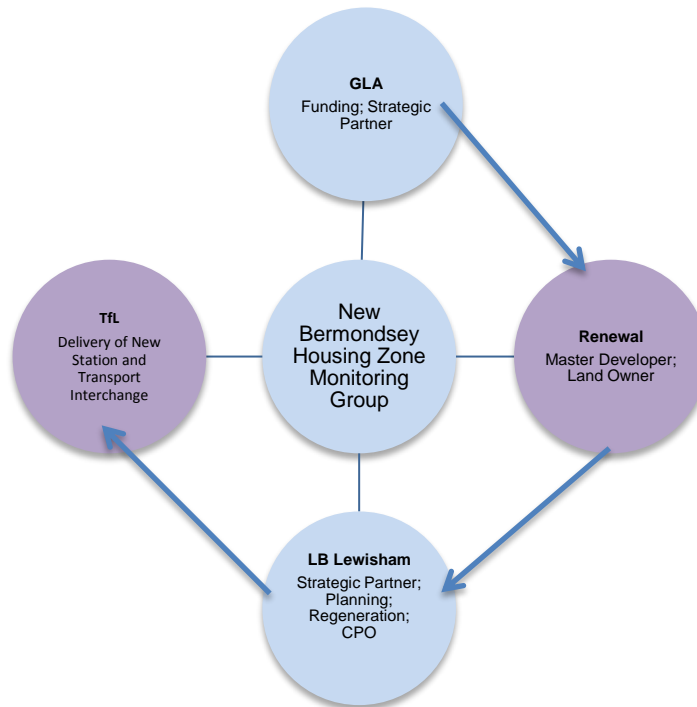
### **Schedule 3 – Borough Contribution**

London Borough of Lewisham's 'something for something'

In 2012 LBL committed £2m funding which enabled the delivery of passive provision to the station and three surrounding underpasses. In addition to this historic contribution, the Borough has also committed £500k towards Energize and on 7 September 2016 resolved to make the CPO.

## Schedule 4 – Governance Arrangements

### Delivery structure for the New Bermondsey Housing Zone



**Details of the proposed contractual agreement between entities and a summary of what purpose those agreements serve.**

#### **Section 106 Agreement**

Renewal is the Master Developer (“the Developer”) and landowner of the overall New Bermondsey regeneration scheme.

Renewal has signed a section 106 agreement, dated 31 March 2012, relating to the New Bermondsey outline planning consent. Signatories of the 31 March 2012 s106 agreement include Renewal (using the former company name Cragside), LB Lewisham and TfL.

A revised s106 agreement, following the resolution to grant the s73 amendment to the masterplan on 12 December 2013, was completed on 18 December 2015 to release the s73 consent.

#### **Pre Planning Agreements**

For the outline planning application and the s73 application the Developer and the Council entered into a Pre Planning Agreement (PPA). It is proposed that the Developer and the Council will enter into a PPA for prior to the submission of planning applications for phase 1A and phase 2.

#### **New Bermondsey Housing Zone Memorandum of Understanding**

As the scheme is Developer led and not Council led, the Memorandum of Understanding between the Council and the GLA formalises the Borough’s continued commitment to the delivery of the New Bermondsey regeneration scheme.

The Memorandum of Understanding will include the following assurances:

- Continued collaborative approach with public and private sector partners (GLA, TfL, Renewal) to facilitate the delivery of the wider New Bermondsey regeneration scheme;
- participation in Housing Zone governance structure (i.e: representation on the New Bermondsey Housing Zone delivery board);
- continued assistance in completion of site land assembly and agreement to consider use of Compulsory Purchase Powers should this be required.

The final terms of the Memorandum of Understanding will be reported back to LB Lewisham's Mayor and Cabinet for approval.

### **Reporting process**

In the New Bermondsey Housing Zone bid addendum, 21 November 2014, it was proposed that *“a reporting process will be agreed with the Developer to enable the Council to have regular updates on the delivery of phase 1A and 2 and early notification of any issues arising that may impact on delivery of the Housing Zone commitments.”*

There will be monthly New Bermondsey Housing Zone Monitoring Group meetings, attended by the Developer, LB Lewisham and the GLA to monitor the progress of the New Bermondsey Housing Zone; TfL will be invited as and when required.

The first of Monitoring Group meeting took place on the 5 March 2015.



## Schedule 5 - Key Performance Indicators (KPIs)

### Planning Performance Agreements

KPI 1                      The Borough will enter into a Planning Performance Agreement with the developer and GLA in respect of any of the sites referable to it.

### Planning Committee

KPI 2                      Any relevant reports to planning committee will be copied to the GLA and the GLA will be invited to attend pre application briefings to this committee in respect of any of the Sites referable to the GLA.

### Planning Team and Joint Working with the GLA

KPI 3                      Joint pre-application meetings will be held and joint pre-application advice will be issued in respect of any of the sites on which the Zone Outputs are to be constructed referable to the GLA and the Borough will put in place a dedicated resource to manage Housing Zone planning applications.

### Planning Conditions

KPI 4                      The Borough will agree draft planning conditions with applicants in respect of Housing Zone applications prior to applications being heard at planning committee (and provided that developer and or any other third party co-operates). The Borough agrees, subject to the receipt of all requisite information, provided that it is satisfactory to the LPA, to discharge planning conditions within 6 weeks of receipt of this information.

### Determination Periods

KPI 5                      The Borough will determine Housing Zone planning applications within statutory timescales unless otherwise agreed with the applicant.

### Section 106

KPI 6                      For Housing Zone planning applications, the Borough will agree s106 heads of terms with applicants prior to planning committee, subject to third party cooperation, and will issue draft s106 agreements as soon as reasonably possible after resolution to grant planning permission and no later than 8 weeks from the date of the resolution by the planning committee. The Borough will comply with the PPA with regard to the timescales from completion of the s106 agreement to an applicant.

Signed for and on behalf of GLA

Signature: .....

Name: .....

Position: .....

Date: .....

Signed for and on behalf of LBL

Signature: .....

Name: .....

Position: .....

Date: .....